

ALASKA PACIFIC LUMBER CO.

IBLA 78-325

Decided July 12, 1978

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive geothermal lease applications OR 15938 and OR 15939.

Affirmed.

1. Geothermal Leases: Generally -- Geothermal Leases: Applications:
Generally -- Geothermal Leases: Discretion to Lease

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the requirement of that Department that the particular national forest lands so leased by subject to nonsurface occupancy stipulations.

APPEARANCES: C. Girard Davidson, President, Alaska Pacific Lumber Co., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Alaska Pacific Lumber Co. has appealed from a decision dated February 15, 1978, by the Oregon State Office, Bureau of Land Management (BLM), rejecting the above-designated noncompetitive geothermal lease applications. 1/

1/ The applications covered the following described lands in Clackamas County, Oregon:

"National Resource Lands OR 15938

T. 2 S.; R. 7 E.; Willamette Meridian

Sec. 25, NE 1/4 NE 1/4, NE 1/4 NW 1/4 NE 1/4, S 1/2 NW 1/4 NW 1/4 NE 1/4

S 1/2 NW 1/4 NE 1/4, S 1/2 NE 1/4 NW 1/4,

S 1/2 S 1/2 NW 1/4 NW 1/4, S 1/4 N 1/2, S 1/2

The leases were offered subject to two special stipulations which were requested by the Forest Service to be included in the leases if issued. The stipulations are as follows:

1. The Lessee agrees not to occupy or use the surface of leased lands except for certain limited uses as authorized in writing by the Forest Service, until (1) the Forest Service completes the land management plan; (2) there is compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4231); (3) the stipulation is modified, supplemented or eliminated or it has been determined to retain it unchanged; and if applicable (4) Bull Run Reserve legislation provides long-term direction for geothermal activity within the reserve and the existing Court Decree is either complied with or lifted; and (5) Congress completes action on the existing Zigzag Mountain Wilderness Bill.

2. To minimize the effect of surface disturbance, temperature gradient holes shall be drilled with small or medium sized truck-mounted drill rigs.

On January 9, 1978, appellant returned unexecuted leases OR 15938 and OR 15939 to BLM. In an accompanying letter, appellant stated: "These applications and leases are at least 7 miles from Mt. Hood and border on private land on the boundary of the Mt. Hood National Forest. It seems inappropriate to us for these two leases to contain a non-surface occupancy limitation." By decision dated January 12, 1978, BLM responded to appellant's communication as follows:

fn. 1 (continued)

Unsurveyed T. 2 S., R. 8 E., Willamette Meridian (Protraction Diagram No. 39)

Sec. 30;

Sec. 31;

Sec. 32.

Total Area 2594 acres."

"National Resource Lands

OR 15939

T. 2 S.; R. 7 E.; Willamette Meridian

Sec. 13;

Sec. 14;

Sec. 23, W 1/2 NW 1/4;

Sec. 24, N 1/2 N 1/2, N 1/2 SE 1/4 NE 1/4, SW 1/4 NE 1/4,

S 1/2 NW 1/4, S 1/2 NE 1/4 SE 1/4, N 1/2 SW 1/4 SE 1/4,

SE 1/4 SW 1/4 SE 1/4, SE 1/4 SE 1/4.

Total Area 1750 acres."

Your letter of January 9, 1978, has been interpreted as a request for extension of time in order to consult with the Forest Service regarding the stipulations attached to leases, OR 15938 and OR 15939 which were offered by our Decision dated December 16, 1977.

An extension is hereby granted until 4:00 o'clock p.m., February 10, 1978 to meet the requirements of our aforementioned decision; or, to return the unsigned leases and stipulations together with evidence that the Forest Service is considering modification of the extension.

Appellant consulted with the Forest Service and on February 8, 1978, wrote BLM as follows:

At this time we do not wish to accept the non-surface occupancy provisions and the stipulations attached to the offered leases * * *. [W]e request that applications for leases OR 15938 and OR 15939 be retained in your active file, and that leases concerning these two applications be offered when the non-surface occupancy stipulation is replaced by such stipulations and requirements as may be necessary to permit occupancy of the areas applied for.

BLM determined that the modifications sought by the appellant were not forthcoming from the Forest Service. It concluded that appellant had refused to accept the terms and conditions under which the Forest Service would consent to lease the subject lands, and had failed to provide satisfactory evidence that the Forest Service was considering modifications of those terms and conditions. Consequently, it rejected the applications.

The Forest Service's Environmental Analysis Report (EAR) dated September 1977 contains a detailed explanation of the impact of the nonsurface occupancy stipulations on a potential lessee. The crux of the report is that exploratory work toward development of geothermal steam resources is encouraged and that the results of such work would influence a final determination as to whether the stipulations should be modified.

Appellant's position on appeal is that it should not be required to accept the leases subject to the nonsurface occupancy stipulations where no wilderness area is involved.

[1] The governing regulation, 2/ 43 CFR 3201.1-3, provides as follows:

Leases for public, withdrawn or acquired lands administered by the Forest Service, may be issued by the Secretary of the Interior only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purpose for which they were withdrawn or acquired.

As we stated in William A. Hendrey, 33 IBLA 71, 72 (1977), "The leasing of national forest lands for geothermal resources may be done only with the consent of the Department of Agriculture. BLM is bound by the adverse recommendation of that Department with respect to geothermal lease applications for such lands." Obviously, BLM is also bound by such terms and conditions as the Department of Agriculture may prescribe in connection with leasing of national forest lands for development of geothermal resources.

Appellants request that "Lease Applications OR 15938 and OR 15939 be retained as active applications until the Government is able to offer the leases so that drilling can take place on them * * *."

In view of the uncertainty as to the occurrence of that situation and the time span possibly involved we do not deem it appropriate to clutter the records with applications which may never reach fruition under the criteria set by appellant. Cf. 43 CFR 2091.1.

2/ Section 15(b) of the Geothermal Steam Act of December 24, 1970, 30 U.S.C. § 1014(b) (1970), reads in pertinent part:

"(b) Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of Agriculture may be issued only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

